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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 4 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)
)
Implementation of the Cable)
Television Consumer Protection)
and Competition Act of 1992)
)
Broadcast Signal Carriage Issues)
)
Amendment of Parts 73 and 76 of)
the Commission's Rules Relating)
to Program Exclusivity in the)
Cable and Broadcast Industries)

MM Docket No. 92-259

GEN. Docket No. 87-24

To: The Commission

COMMENTS OF CEDAR RAPIDS TELEVISION COMPANY

Cedar Rapids Television Company ("CRTV") hereby submits its comments in response to the Commission's November 19, 1992 Notice of Proposed Rulemaking ("NPRM") in MM Docket No. 92-259, FCC 92-499, in which the Commission solicited comments on broadcast signal carriage issues with regard to the implementation of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act").¹ CRTV is the licensee of television station KCRG-TV, Cedar Rapids, Iowa, and has a strong interest in several of the issues raised by the Commission's NPRM. These comments will address each area of specific concern in the order discussed by the Commission.

¹ These comments additionally serve as CRTV's response to the reopened proceedings in GEN. Docket No. 87-24, which raises issues relating to program exclusivity in the cable and broadcast industries.

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MUST-CARRY ISSUES:

Definition of Television Market. In paragraph 18 of the NPRM, addressing the definition of a television market, the Commission seeks comment on how to best handle the issue of sporadic changes in the Arbitron television markets. A prime example of these changes is presented by Cedar County, Iowa. Cedar County currently is assigned by Arbitron to the Davenport-Rock Island-Moline market, but is assigned by Nielsen to the Cedar Rapids-Waterloo market. Moreover, Cedar County has been reassigned to each market many times over the years. CRTV submits that future changes in the Arbitron markets, occurring after the effective date of the Act, should be addressed by the Commission through petitions for special relief by broadcasters or cable operators who feel the Commission should reassign a county to conform to a change in Arbitron.

Revision of Section 76.51. Even more significant are the issues raised by paragraph 21, regarding necessary revisions under the Act to update Section 76.51 as part of the implementation of the must-carry provisions. Clearly, many of the market designations in the current FCC list, originally derived from Arbitron's 1970 prime time household rankings, are no longer representative of the true makeup of the markets. For the past twenty-two years, the FCC has referred to CRTV's market as "Cedar Rapids-Waterloo," while for most of that time Arbitron has referred to it as the "Cedar Rapids-Waterloo-Dubuque"

market.² According to the November, 1992, Arbitron audience measurement, Dubuque County had 30,300 television households, nearly ten percent (10%) of the total of 308,000 households in the Cedar Rapids-Waterloo-Dubuque market. The Commission's failure to include Dubuque in the market designation denied local broadcasters an opportunity to assert syndicated exclusivity and network non-duplication rights, which the Commission has determined are necessary for the economic well-being of over-the-air broadcasters in today's multi-channel world.

The NPRM notes that the Commission currently uses the 1970's market designations for territorial exclusivity, syndicated exclusivity, and network nonduplication rules. It specifically asks for comment as to whether these rules should be conformed to the ADI market definition which Congress has required for determining must-carry rights. In particular, the Commission expresses concern in paragraph 23 regarding the situation of a station which is entitled to must-carry status, but which is subject to deletion of portions of its signal due to another station asserting exclusivity or nonduplication rights.

When the Commission adopted its nonduplication and syndicated exclusivity rules, it attempted to craft them to minimize disruption of local viewing patterns. CRTV submits that the Commission has an obligation to follow this same standard

² The sole station serving Dubuque did not begin operating until 1970.

here. Consequently, the Commission should amend Sections 76.51, 76.92, and 76.151 so that must-carry, nonduplication, and syndicated exclusivity rights obtain in the same geographic area -- the ADI specified by Congress for must-carry. If the rules are conformed to the ADI market, a station entitled to must-carry status would not be subject to exclusivity or nonduplication claims.³ This is a common-sense approach. Any other approach would waste the cable operator's channel capacity, inordinately disrupt consumer viewing habits, and create an administrative conundrum for broadcasters, cable operators, and the Commission itself.

Definition of Network Affiliate. Paragraph 26 of the NPRM requests comment on how to define a network affiliate. The Commission specifically asks whether such a determination should be based on programming throughout the day or only in selected day parts such as prime time. CRTV believes that "substantial duplication" of programming of two network affiliates should be determined by comparing the total programming of the similarly affiliated stations over a seven day period, 24 hours per day,

³ Conversely, if a station is carried by a cable system but is not entitled to must-carry status, then its signal should be subject to nonduplication and syndicated exclusivity claims under the present rules. CRTV also agrees with the Commission's proposal to utilize Arbitron's list of all market designations, rather than just the top 100 markets as currently used by Section 76.51. Likewise, CRTV supports the Commission's plan to provide an annual update of the top 100 markets and to amend the entire list every three years.

using a sample week established by the Commission.

CRTV submits that a simple comparison of prime time programming fails to take into account the drastic changes in station programming practices since the 1970's.⁴ Over the past two decades, stations have made enormous investments in local news, public affairs, entertainment, and other programming broadcast outside of prime time. Ignoring this investment in local programming and using only the five-hour period of prime time to establish whether a station is entitled to must-carry status risks ignoring these investments and denying viewers access to this local programming. Using a broader comparison standard to determine must-carry status will serve as an incentive for stations to develop and nurture unique, local programming, thus encouraging maximum program diversity.

Channel Positioning. CRTV believes that a formal priority structure should be established to govern competing claims for channel positioning. CRTV submits that a reasonable approach would be to give first priority to a station's over-the-air channel assignment, if technically feasible, followed by its channel position on July 19, 1985. Cable operators and broadcasters should have flexibility to mutually agree to other channel placement so long as it does not interfere with the

⁴ Section 76.5(n) of the Commission's Rules defines prime time as the five hour period from 6 to 11 p.m., or 5 to 10 p.m. in the central time zone. Stations in the mountain time zone may elect which of these periods to utilize.

channel positioning rights of other must-carry stations.

Agreements between stations and cable operators on uniform channel placement throughout their service areas should not be allowed to deny stations with must-carry status their right to their over-the-air channel assignment or their channel position on July 19, 1985. Permitting such a result would encourage stronger stations and cable operators to collude to deny channel position to a weaker competitor.

RETRANSMISSION CONSENT ISSUES:

Implementation. Paragraph 51 of the NPRM requests comment on the consequences of failure to notify one or more cable systems of their election of must-carry or retransmission consent status. CRTV believes that the Commission should prescribe, in the event of failure to notify within 30 days of the statutory deadline, a default election of must carry status. Cable operators would be aware of whether a station is entitled to must-carry status by reference to the Commission's updated list of markets as prescribed by the Act. The operator would therefore proceed to carry the station under that status, and the station would lose its right to negotiate retransmission consent for a three year period. This process would provide a streamlined approach to resolving such failures and an adequate penalty (the loss of potential retransmission consent consideration) to encourage stations to communicate their elections to cable

operators in a timely manner.

Permission of Copyright Holder. Paragraph 65 of the NPRM requests comments on whether broadcast stations need to obtain permission from the copyright holders of programming before granting retransmission consent to a cable system or other multichannel video programming distributor. CRTV believes that the Commission is correct in suggesting that stations should not have to obtain prior authorization from the copyright holders to grant retransmission consent unless there is an express requirement to do so in existing or future program licensing agreements or network affiliation agreements. CRTV believes that the language of the Act is quite clear on this matter. A cable system's simple retransmission of a station's over-the-air signal does not automatically create a new class of rights for copyright holders, but does give program licensors and stations the right to negotiate rights in future agreements.

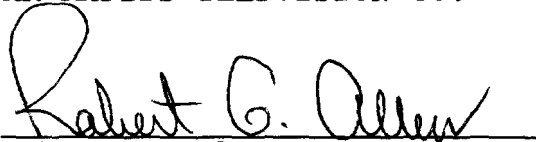
CONCLUSION:

For the reasons discussed above, CRTV submits that adoption of its proposals would serve the public interest by fostering a healthy, local over-the-air television service. CRTV believes that its suggestions are fully consistent with Congressional

intent and should be implemented.

Respectfully submitted,

CEDAR RAPIDS TELEVISION CO.

By: 
Robert G. Allen
Vice President/General Manager

January 4, 1992